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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 708

AETNA INSURANCE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 28–37) is reported at 346 F. 2d 985. The opinion of the district court (Pet. 24–27) is reported at 227 F. Supp. 259.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 1965. A petition for rehearing was denied on August 2, 1965. The petition for a writ of certiorari was filed on October 29, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

794-902—65

QUESTIONS PRESENTED

1. Whether it was permissible for the court of appeals to affirm the judgment of the district court on a different ground from that adopted by the district court.

2. Whether the decision below improperly injects the federal courts into the administration of trusts and estates.

STATUTES INVOLVED

26 U.S.C. 7402(a) provides in pertinent part:

> The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica,* orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. * * *

26 U.S.C. 7404 provides in pertinent part:

> If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary or his delegate shall proceed to collect the tax under the provisions of general law * * *.

STATEMENT

Petitioner, as successor to the Century Indemnity Company, became surety on the bond of Morton M. Rose and Betsy R. Wittenberg, administrators of the estate of Morris D. Rose. The bond (in the amount of $180,492) guaranteed the faithful performance of

the administrators in administering the estate. The administrators petitioned the Orphan's Court of Philadelphia County to reduce the bond, stating in their petition (Pet. 31):

> 2. On March 31, 1948, your petitioners filed their first and final account as administrators of the above estate. An adjudication thereon was entered on July 14, 1948, whereby, inter alia, petitioners were directed to make distribution to the heirs of the decedent.
>
> 3. Your petitioners have complied with this order *leaving in their custody only funds or property required to pay any outstanding obligation which may be found to be due as federal estate tax to the United States.* That matter is now pending.
>
> 4. The maximum federal estate tax that might be assessed will not be in excess of Twenty Thousand Dollars ($20,000.00). The amount of security so heretofore filed is *in excess of any amount required to meet any exigency of their trust.* The continuance of such amount of security requires the payment of a premium to the bonding company that is acting as surety on such bond and creates an unnecessary hardship and expense to the said estate. [Emphasis added by court of appeals.]

The surety company consented to the granting of this petition (Pet. 32).

A notice of deficiency was served on Rose and Wittenberg in their official capacity on November 6, 1950, and on December 23, 1952, pursuant to stipulation of counsel, the Tax Court found that the estate owed an estate tax deficiency of $7,337.86 (Pet. 32).

Assessment was made by the Commissioner of Internal Revenue on February 12, 1953 (*ibid.*). On February 11, 1959, the United States filed suit against the estate to collect the balance due on the assessment, and obtained judgment by default. (Pet. 25, 32–33).

The present action was instituted by the United States on April 26, 1963, to establish, pursuant to Revised Statutes § 3467, the personal liability of Rose and Wittenberg for the estate taxes due and owing from the estate of Morris D. Rose, and to recover from petitioner pursuant to its obligation as surety on the administrators' bond. The district court, rejecting petitioner's defense of the statute of limitations, granted the government's motion for summary judgment (Pet. 24, 33). The court of appeals affirmed (Pet. 37), stating (Pet. 33–34):

> If, as has been argued, that period of limitation begins to run against the Government at the time of the original assessment against the estate, the instant suit would be barred. We find no need, however, to deal with the problems presented by this argument, for we think that under the particular circumstances of this case arising from the "petition to reduce bond," the "consent of the surety" and order of the Orphans' Court, the individual liability of the administrators to the Government is wholly independent of the liability established under R.S. § 3467.

The court of appeals held, alternatively, that Rose and Wittenberg were agents for the government, in that they had received funds on the representation

that they were holding them for another and thereby had undertaken the duty to account with respect to such property. The bringing of suit by the United States constituted ratification of the agency relationship (Pet. 36).

ARGUMENT

The decision of the court of appeals is not one of general application and its effect is not likely to be widespread. It was based upon and limited to the "particular circumstances of this case" (Pet. 33), arising from the petition to reduce the bond, which established the trust, the consent of the surety to the petition, and the order of the Orphans' Court granting it—circumstances which, as the court below held, gave rise to an express trust for the payment of federal estate taxes. Moreover, the decision is clearly correct and there is no conflict between circuits. Accordingly, further review is not warranted.

1. The judgment of a district court may, of course, be affirmed by a court of appeals where the decision of the district court was correct, although based upon an incorrect legal ground. *Helvering* v. *Gowran,* 302 U.S. 238, 245; *Riley Co.* v. *Commissioner,* 311 U.S. 55, 59. "It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate." *Securities and Exchange Commission* v. *Chenery Corp.,* 318 U.S. 80, 88.

The administrators, in their petition to reduce the bond, stated that they were holding the funds remaining in their custody, in trust, to satisfy the estate tax claim of the United States, and for no other purpose (Pet. 34). Acting upon this declaration of trust, and the approval of the surety to their petition, the Orphans' Court permitted Rose and Wittenberg to obtain possession of the funds for this express and limited purpose. As the court of appeals correctly ruled, the result of the Orphans' Court proceeding was to create a trust for the benefit of the United States and vest the funds of the estate in Rose and Wittenberg as trustees for the United States (*ibid.*).

The court of appeals thus found it unnecessary to consider the defense offered by petitioner that the statute of limitations for Revised Statutes § 3467 had run. Correctly applying the law of Pennsylvania, the court of appeals held that the statute of limitations for trusts begins to run against a trust beneficiary with respect to a suit against the express trustee, if at all, only when the beneficiary knows that the trust has been repudiated or reasonably should have known it. *Pennsylvania Co. for Ins. et al.* v. *Ninth Bank & Trust Co.*, 306 Pa. 148, 158 Atl. 251. The court found no evidence here that the government could even have known of the trust arrangements for its benefit until some time after the unsuccessful return of execution on the 1959 judgment (Pet. 35).

Petitioner does not now seriously challenge the soundness of this ruling on the merits—or the soundness of the court of appeals' alternative ground of

affirmance (see Statement, p. 4, *supra*).[1] And it cannot claim surprise, since it had full opportunity to—and did—argue the court of appeals' grounds of decision in a petition for rehearing, which that court denied. Accordingly, the fact that the district court rested petitioner's liability on the bond on a different ground does not affect the validity of the court of appeals' decision.[2]

2. The jurisdiction of the federal courts in this case was soundly based on 26 U.S.C. 7402(a) and 7404 (see p. 2, *supra*), relating to the collection of federal estate taxes. This was in no sense a suit "to probate a will or administer an estate" (*Markham* v. *Allen*, 326 U.S. 490, 494); nor did the federal court "interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court" (*ibid.*). The broad provisions of the applicable jurisdictional statutes plainly authorized the United States to enforce an express trust for the payment of federal estate taxes. And the assumption of jurisdiction in such a case imports no general intrusion into probate and trust matters.

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[1] No question of limitations could be raised with respect to the agency theory also adopted, as an alternative ground, by the court of appeals, since under that theory the duty of Rose and Wittenberg to account did not arise until this suit was brought on April 26, 1963.

[2] None of the cases cited by petitioner (Pet. 11) involved the question of the power of a court of appeals to affirm in these circumstances.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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